



COUNTY OF SONOMA
OFFICE OF THE DISTRICT ATTORNEY

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JILL RAVITCH
District Attorney

July 15, 2019

Dan Rubins
Filed via MuckRock News
DEPT MR 76588
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Somerville, MA 02144-2516
76588-16869878@requests.muckrock.com

RE: Public Records Request – July 4, 2019: Brady - Giglio List / Penal Code § 832.7(b)(1)(C)

Mr. Rubins:

I am the designated representative of the Sonoma County District Attorney's Office assigned to oversee your California Public Records Act (hereinafter "PRA") request dated July 4, 2019. The Sonoma County District Attorney's Office (SCDAO) received your email PRA request on July 4, 2019.

Your two (2) page request lists one (1) separate category of records relating to State Bill 1421 and Penal Code Section 832.7(b)(1)(C) with a maximum date range of ten (10) years.

Specifically, your request is as follows:

Request One:

"I am requesting all "Brady lists," Giglio lists," "potential impeachment disclosure lists," or any similar compiled records or lists of records of the type set forth in California Penal Code §832.7(b)(1)(C). That is, "Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence".

"In particular, the records I am seeking would provide a list of law enforcement officers in your jurisdiction whose involvement in a criminal proceeding would have to be disclosed as potentially exculpatory evidence in accordance with Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 450 U.S. 150 (1972). I am making this request for both sworn employees and non-sworn employees. At a minimum, please include the full name, serial number, and agency of employment; separate lists for each agency in your jurisdiction are fine. If possible, please also include the date of inclusion on the list and any descriptive information relating to the reason for inclusion on the list. If redactions are made, please be sure to justify how the redaction "clearly outweighs" the public interest of disclosure per Government Code § 6255."

Response One:

Your main request is for all “Brady lists,” “Giglio lists,” “potential impeachment disclosure lists,” or similar compiled records or lists of records of the type set forth in California Penal Code § 832.7(b)(1)(C).” The law enforcement agencies within the Sonoma County jurisdiction have not provided such a list to the SCDAO. The agencies have cited *Ass’n for L.A. Deputy Sheriffs v. Superior Court* (2017) 13 Cal. App 5th 513. As I am sure you are aware, the California Supreme Court granted review on October 11, 2017. (See Cal. Rules of Court 8.1105(e)(1)(B) and 8.1115(e), Court of Appeal opinion not controlling but may be cited as persuasive.)

The official summary of the Court of Appeals decision is as follows:

A union representing sheriff’s deputies sought to enjoin disclosure of a list created by the Los Angeles County Sheriff’s Department (LASD) of deputies whose personnel files contained sustained allegations of misconduct allegedly involving moral turpitude or other bad acts relevant to impeachment (Brady List). The trial court issued a preliminary injunction that prohibited general disclosure of the Brady list to the district attorney or other relevant prosecutors but permitted disclosure of an individual deputy from the list, in the absence of compliance with Pitchess statutes, if he or she was also a potential witness in a pending criminal prosecution. (Superior Court of Los Angeles County No. BS166063, James C. Chalfant, Judge.)

On January 2, 2019, the Californian Supreme Court ordered supplemental briefing regarding the effect of SB 1421 on the issue, as stated here:

Supplemental briefing ordered. The parties are directed to serve and file supplemental briefs addressing the following question:

What bearing, if any, does SB 1421, signed into law on September 30, 2018 have on this court’s examination of the question presented for review in the above-titled case?

The matter was argued and submitted to the California Supreme Court on June 5, 2019. The original question presented is as follows:

The court directed the parties to brief the following issue: When a law enforcement agency creates an internal Brady list (see Gov. Code § 3305.5), and a peace officer on that list is a potential witness in a pending criminal prosecution, may the agency disclose to the prosecution (a) the name and identifying number of the officer and (b) that the officer may have relevant exonerating or impeaching material in his or her confidential personnel file, or can such disclosure be made only by the court order on a properly filed Pitchess motion? (See *Brady v. Maryland* (1963) 373 U.S. 83; *People v. Superior Court (Johnson)* (2015) 61 Cal.4th 696; *Pitchess v. Superior Court* (1974) 11 Cal.3d 531; Pen. Code, §§ 832.7-8.32.8; Evid. Code, §§ 1043-1045.)

Therefore, as to your request for a “Brady” or “Giglio” list for outside law enforcement agencies, no such record exists.

Your broader request for “[A]ny record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty...” can be found in Penal Code Section 832.7(b)(1)(C). District Attorney Investigators are employed by the SCDAO and are also peace officers. As to those investigators, a search has been completed and it has been determined that no such record exists. Personnel records outside a sustained finding for dishonesty are not discoverable. See Government Code § 6254(f) (personnel records).

If you are referring to records that relate to outside Sonoma County law enforcement agencies that have submitted investigatory reports to this office for determination as to whether a crime has been committed, those records will not be produced. (See Gov. Code § 6254(f); Haynie v. Superior Court (2001) 26 Cal.4th 1061). In addition, the SCDAO would not have knowledge that an outside law enforcement agency conducted an internal investigation that resulted in an administrative investigation that may have resulted in a “sustained finding”. The SCDAO is not the proper agency to make such a disclosure nor does the SCDAO have the legal authority to publish said records if they did in fact exist. See Evidence Code § 1040/1042 (Official Information); Government Code § 6255 (Deliberative Process); Code of Civil Procedure 2018.030 and Penal Code § 1054.6 (Prosecutor’s Work Product).

The lead prosecution agency in the State of California, the Attorney General’s Office, has taken the position that the sole agency responsible for disclosing Penal Code § 832.7 and Penal Code § 832.5 records is either the employing agency of the officer subject to the investigation or the actual agency that conducted the investigation. The agency reviewing the investigation to determine if a crime has been committed, is neither the originator of the records nor maintains those records per Penal Code § 832.7. Therefore, the SCDAO is not the proper agency to determine if the records exist nor is it the proper agency to determine whether an exemption applies or whether the records are privileged.

The last sentence in section Penal Code § 832.7, subdivision (a) clearly confirms that the Legislature did not intend to make the District Attorney subject to mandatory disclosure requirements regarding investigations of *other agencies’* officers. It broadly states that “[t]his section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a **district attorney’s office**, or the Attorney General’s Office.” Through this provision, the Legislature underscores that there is a distinction between records when held by the employing agency on the one hand, and the same records when held by an investigation agency or entity that does not employ the officer on the other. The latter simply does not “maintain” the record.

Specifically as to internal investigations conducted by outside Sonoma County law enforcement agencies, the SCDAO does not in the normal course of business have access to, collect, compile nor maintain any data relating to other law enforcement agencies internal personnel investigations. Nor does the SCDAO accept, log, and maintain complaints levied against county law enforcement officers. If such a complaint is noticed to the SCDAO, the SCDAO will, in the normal course of business, forward said complaint to the appropriate law enforcement agency.

In closing, the Sonoma County District Attorney’s Office claims for its records, such as might exist, any and all applicable exemptions from CPRA disclosure. In maintaining the lawful confidentiality of these records, the Office claims, enforces, and applies any and all applicable exemptions, privileges, and proscriptions against public disclosure of records, including, but not limited to, those listed in Article 2 of Government Code, Title 1, Division 7, Chapter 3.5, the California Evidence and Penal Codes, California Constitution, Code of Civil Procedure, California case law, U.S. Constitution, Federal case law, Federal Statutes and Guidelines, and the Federal Rules of Evidence.

Should you have any questions regarding this matter, please do not hesitate to contact the undersigned directly at (707) 565-2311 or via e-mail at william.brockley@sonoma-county.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "William Brockley", is written over a horizontal line.

ASSISTANT DISTRICT ATTORNEY
County of Sonoma